



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 8, 2004

Ms. Jennifer Soldano  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2004-0154

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194023.

The Texas Department of Transportation (the "department") received a request for a copy of the complaint and all other supporting documents filed against the requestor by a named individual. You claim that the requested information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we address a procedural matter. The requestor asserts that the department was not timely in requesting this ruling. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply "not later than the 10th business day after the date of receiving the written request." *See* Gov't Code § 552.301(a), (b). The department states that it received the present request for information on October 17, 2003. The 10th business day following that date was October 31, 2003. The department submitted its request for a ruling on October 30, 2003. Accordingly, we conclude that the department was timely in requesting this ruling.

In Senate Bill 1581, which became effective on June 18, 2003, the Seventy-eighth Legislature amended section 552.116 of the Government Code. As amended, section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, a county, or a municipality is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Act of May 28, 2003, 78th Leg., R.S., ch. 379, § 1, 2003 Tex. Sess. Law Serv. 1604 (to be codified as amendment to Gov't Code § 552.116). You inform us that the submitted information was compiled during the course of a formal audit conducted by an internal auditor for the department and that the audit is not finished. You also inform us that the department's internal auditors and audits are authorized by section 201.108 of the Transportation Code, the Texas Internal Auditing Act, chapter 2102 of the Government Code, and the General Appropriations Act for Fiscal Year 2002-2003. Based on your representations, we conclude that the submitted information constitutes audit working papers under section 552.116(b)(2) of the Government Code and is therefore excepted from disclosure in its entirety under section 552.116.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah I. Swanson', with a long, sweeping horizontal line extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 194023

Enc. Submitted documents

c: Mr. Herman T. Ivey  
13446 Moscow Trail  
Austin, Texas 78729  
(w/o enclosures)